Supreme Court, U.S.
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No. 92-1289

In the Supreme Court of the United States

OCTOBER TERM, 1992

JOSE M. OTERO, PRO SE,
PETITIONER,

v.

INTERNATIONAL GENERAL ELECTRIC CO., ET AL.,
RESPONDENTS.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

SUPPLEMENTAL BRIEF

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SUPPLEMENTAL BRIEF

TO THE HONORABLE SUPREME COURT:

COMES NOW petitioner, Jose M. Otero, and respectfully states and prays:

In a "*Motion Requesting Enlargement of Time to the Honorable Court*"* by Attorney Escalera, co-attorney with Ramon H. Vargas, Esq., for Mallinckrodt Corp., a situation has arisen, which brings forth an "*intervening matter not available at the time of the party's last filing*" (petitioner Otero's filing Petition for Writ of Certiorari on January 29, 1993) as expressed and allowed for by S.C. Rule 15.7. (*Supplemental Brief*)

* May the Honorable Court take notice that this MOTION was signed by a certain Edna Fernandez who is not allowed to practice in the Hon. Supreme Court. Petitioner Otero moves thus for Summary Affirmance of Petition for Writ of Ceritorari pursuant to S.C. Rule 21 at .2(b) withstanding S.C. Rule 18.

1. In footnote 1 of his "*Motion*" dated February 22, 1993, attorney Escalera mentions *Imcera Group, Inc.*, but doesn't mention Mallinckrodt's discontinued operations in the company's chemical division. (See Footnote 1) U.S. Supreme Court case: 92-1289; (See Exhibit 1 & 1A)*

2. *Dr. Charles W. Parker*, who wrote "*Allergic Activation of Mast Cells*", (Appendix D. certiorari) Jpn. Journal of Allergology 35 (5) 305-312, 1986; and Dr. Bruce L. McLennan, who wrote "*Low Osmolality Contrast Media: Premises and Promises*"; index term Contrast Media, Radiology 1987: 162: 1-8; *prior* to trial case 87-278 (JAF) were then representing Mallinckrodt Chemical Corporation (Appendices D; *certiorari*) (Section 505 (7) (AXB) (i) (ii) (FDA) a corporation to which Mr. Escalera doesn't refer to in his "*Motion*", supra at (1). [See Exhibits 1b & 1c]

Both expert witnesses have renowned world reputations according to their publications (curriculum vitae) (*Record on Appeal.*)

Dr. Parker has gone so far as to be a "**contributing research scientist**" in Dr. Beate M. Czarnetzki's "*Urticaria*", published by *Springer-Verlag, Berlin, Heidelberg, New York, Tokyo; 1986*; Professor Czarnetzki, M.D., works for the Department of Dermatology School of Medicine, University of Munster; Von-Esmarch — Str 56 D — 4400 Munster.

"*Urticaria*" ISBN 3-540-15264-4
ISBN D-387-15264-4
Springer Ver Lag etc.

---

* Title pg., Dr. Roman Franco's deposition as mentioned by attorney Escalera in Trial Transcript taken at Lasa, Escalera & Reichardt on 2/19/88, at Trial Transcript, Vol. 2, pg. 212. (See Reasons for Granting Writ at 5, pg. 9 Certiorari) See page 37 *infra*.

Library of Congress Cataloging in Publication Data; Czarnetzky Beate M.: Urticaria / B.M. Czarnetzki. (Exhibit 2)

and in Relation to this case:

> Attorney Escalera expressed for the Record (pg. 396, Trial Transcript, lines 22-25):
>
> *The Court: Is that true?*
> *Mr. Escalera*: Your honor my recollection and I don't mind, I mean, I don't mean to play tricks with this, but my recollection was that Dr. Parker, told, I recall Dr. Parker (pg. 397, *Trial Transcript* line 1 to 4) and I recall that what he said is that he didn't *know*, that he didn't recognize that he *knew* the book but he didn't think that Czarnetzki was such a great thing, I mean, something to that effect. I am not playing tricks with this. (See Exhibit 3) (See Exhibit 4) (See Exhibit 5 at p. 36 *infra*.)

Yet, at Section called "*References, Urticaria*" by Czarnetzki, *Dr. Charles W. Parker, M.D.*, the same expert witness for Mallinckrodt cited in petition for Writ of Certiorari is *referred* to by Dr. Czarnetzki at pg. 156:

Chptr. 2: Marguard DL, "*Parker C.W.*", Sullivan T.J. (1978), "*Potentiation of Mast Cell mediator release by adenosine*". J. Immunol 120: 871-878.

> id at 156; "*Parker, C.W.*", *1982*, "The Chemical Nature of slow reacting substances." In: Weissman G (ed.) Advance in Inflammation Research; Raven Press, N.Y. Vol. 4 pp. 1-24.
>
> id at 156 "*Parker, C.W.*" Huber MM, Hoffman MK, Falkenheim SF (1979) Characterization of two major species from rat basophilic leukemia cells as glutalthionil

thioesters of eicosatetraenoic acids oxygenated at the 5 position. Evidence that peroxy groups are present and important for spasmogenic activity. Prostaglandins 18:673-686.

id at 157, *Parker, C.W.*, Schechtel, T.; Falkenheim, S.F., Huber MM. (1983); Induction of I G E receptors on human lymphcytes. Imm Comm 12:1-10.

Chptr. 2, pg. 158 — Yecies L.D., Kaplan AP (1980) *Urticaria:* In "*Parker, C.W.*" (ed) Clinical Immunology, Saunders, Philadelphia, pg. 1283-1315.

Chptr. 3, pg. 160 "*Parker, C.W.*" (1975) Drug Therapy; Drug Allergy New England J. Med 292:511-514.

Chptr. 11 pg. 176 "*Parker, C.W.*" (1975) Drug Allergy (Third of three parts.) N. England J. Med. 292:957-960.

Now let's see how *Charles W. Parker testified* under oath in his *video-taped* deposition in lieu of *testimony* at pg. 19, lines 16 to 24, and pg. 93, lines 14 to 25; pg. 94 lines 2 to 6, in regard to Dr. Czarnetzki; (Exhibit 4) (Exhibit 5)

Two questions arise: (1) Given the fact that "*Charles W. Parker*" contributed to Dr. Czarnetzki's book "*Urticaria*", why didn't he so *admit*? (2) Given the fact that "*Charles W. Parker*" didn't, at any point in time, testify that Dr. Czarnetzki (Re: Parker — "he didn't think that Dr. Czarnetzki was such a great thing" (Escalera's comment) nor (Re: Parker — "that he didn't recognize that he knew the *book*" Escalera's comment, (Exhibit 3) but actually Parker said "*he recognized the book.*" (Exhibit 4 & 5) — who is the Honorable Court to believe, Dr. Parker or attorney Escalera, both of them, or none of the two? This is also respectfully submitted to the Honorable Supreme Court as evidence of trickery, misrepre-

sentation and *fraud* as part of the conspiracy and concealment alleged by Petition against Mallinckrodt Chemical Works (Appendix Petition for a Writ of Certiorari at A-130.) (See Appendix H).

Each and every point brought forth in this Supplemental Brief, is directly related to the fact that *Imcera Group, Inc.*; *IMC Holdings (U.S.A.), Inc.* and *Mallinckrodt Medical Corp.*, are mainly involved in the production and distribution of "*Optiray*" (ioversol); (A *LOCM* (low osmolality contrast media vis a vis Conray 60 a *HOCM* (high osmolality contrast media) and a question remains unanswered, is Conray 60% out of the market along with Mallinckrodt Chemical Works? And if so, *why*? (See Appendix E, Petition for Certiorari, pg. A-51)

Respectfully submitted on this 30th day of March, 1993, from San Juan, Puerto Rico, to the Honorable Supreme Court.

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San Juan, Puerto Rico 00918

EXHIBIT 1

Supreme Court Of The United States

No. 92-1289

Jose M. Otero, Pro se,
petitioner,
v.
International General Electric Co., et al,
respondents.

MOTION REQUESTING ENLARGEMENT OF TIME

* * * *

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[1] Pursuant to Rule 29.1 the following shall constitute a list naming all parent companies and subsidiaries (except wholly owned subsidiaries) of the appearing corporation: IMCERA Group, Inc., IMC Holdings (USA), Inc. and Mallinckrodt Medical Corp.

EXHIBIT 1A

MONDAY, JANUARY 18, 1993

Imcera's Profit On Operations Rose In Quarter

By SCOTT MCMURRAY
Staff Reporter of THE WALL STREET JOURNAL

Imcera Group Inc., citing continued strong growth in its medical products division, said it expects to report a 12% gain in operating earnings to 37 cents a share, or an indicated $28.7 million, from 33 cents a share, or $25.7 million, for its second quarter, which ended Dec. 31.

The Northbrook Ill., specialty chemical and health products company said its second-quarter sales rose about 5% to $440 million. The company expects to report second-quarter results tomorrow.

Ray Holman, Imcera's chief executive, said in an interview that the 12% operating earnings gain was "in line" with the company's mid-December projections for fiscal 1993 operating earnings gains of "plus or minus 15%." Until that time, Imcera had been projecting 1993 operating earnings growth of 20%.

The reduced December forecast was issued at the same time company directors, led by Chairman George D. Kennedy, forced out former chief executive M. Blakeman Ingle, citing declining earnings at the company's Pitman-Moore animal health products unit. Mr. Holman, previously head of Imcera's Mallinckrodt medical products division in St. Louis, was named to succeed Mr. Ingle.

Imcera said the Pitman-Moore unit is the focus of a top-to-bottom re-evaluation that the company will explain at a meeting of division managers in Chicago today and tomorrow.

"There is bad news in every company, and with us, it's Pitman-Moore," Mr. Holman said. Pitman-Moore's second-

quarter earnings skidded about 30% to $11 million from $16 million a year earlier, Mr. Holman said, while sales were about flat.

Mr. Holman wouldn't comment on details of the Pitman-Moore review, but he indicated that a streamlining may be in order that could include trimming business lines, plants, research projects and employees. The executive said he hopes to have a business plan fully implemented at Pitman-Moore by the end of June, which is the end of Imcera's fiscal year.

Mallinckrodt medical products continues to be the earnings powerhouse for Imcera, Mr. Holman said. Operating earnings for the unit jumped 45% to 50% in the second quarter, and sales increased by almost one-third, he said. He cited strong sales of the company's Optiray medical imaging product in Europe and Asia as a major reason.

Excluding discontinued operations in the company's chemicals division, operating earnings increased about 15% to 20%, and sales were roughly flat with a year earlier, Mr. Holman said. Big sellers in the division include intermediate ingredients used in the non-aspirin pain reliever acetaminophen and medical narcotics including codeine and morphine.

(Emphasis Supplied)

EXHIBIT 1B

Ioxaglic Acid:
A New Low-Osmolality Contrast Medium

Guest Editor
Bruce L. McClennan, MD

Director, Abdominal Imaging Section
Mallinckrodt Institute of Radiology
St. Louis, Missouri

Symposium Proceedings
Scottsdale, Arizona
September 19-21, 1983

S292 November-December Supplement 1984 Vol.

INVESTIGATIVE RADIOLOGY

The *conference on ioxaglate was held in Scottsdale, Arizona with generous support from Mallinckrodt, Inc.* It was not only timely, but was a unique opportunity for discussing both the basic and clinical aspects of this new contrast agent. Investigators from many diverse fields and disciplines were able to exchange ideas and provide new information. Perhaps the true value of the symposium, as with other conferences, will be ultimately gauged by new investigational paths suggested by the lively discussions that followed the formal presentations of the scientific data.

Mallinckrodt and the organizers of the symposium are to be congratulated for providing the opportunity for the dissemination of new knowledge important to clinicians and leading to newer investigational approaches.

Bruce L. McClennan, MD
Mallinckrodt Institute of
Radiology
St. Louis, Missouri

(*Emphasis Supplied*)

EXHIBIT 1B (Continued)

DR. BRUCE L. MCLENNAN

[96] *Cross Examination*

BY MR. LOPEZ:

Q. Doctor, good evening. Would you please advise us, how many times have you testified as an expert for Mallinckrodt?

A. For Mallinckrodt Chemical Company?

Q. Right. For the defendants in this case.

A. I have never testified for Mallinckrodt Chemical Company.

Q. Is this the first time you testify for Mallinckrodt?

A. I think that's what I said.

Q. For Mallinckrodt, it's the first time you testify?

A. I am very sure that's what I said.

Q. Now, how many times have you lectured on Mallinckrodt?

[97] A. Lectured? Could you just —

MR. ESCALERA: Excuse me, for Mallinckrodt?

MR. LOPEZ: For Mallinckrodt products.

THE DEPONENT: Have I lectured on Mallinckrodt products?

MR. ESCALERA: Objection. I don't think the question is clear. He has stated that he has lectured on contrast material which include, of course, a product by Mallinckrodt.

MR. LOPEZ: I'm referring to Mallinckrodt products, in general.

THE DEPONENT: From the very start of my interest in contrast material, which I detailed for you before, when I was a fellow, I had lectured, talked about Conray, 406, — Conray — 60, Conray 400, the Mallinckrodt, the meglumine salts.

BY MR. LOPEZ:

Q. But I am not limiting my question to Conray now.

[98] I'm referring to products manufactured by Mallinckrodt.

A. Lectured on products?

Q. Right.

A. Not contrast products?

Q. Any product.

A. I don't think, ever.

Q. Ever. Now, on contrast material, how many times, medias, how many times have you lectured?

A. On contrast material? I would find it difficult to give a number, if you mean lecture, giving a talk, a formal talk other than teaching around the table, several times a year since — certainly since I got the GW in 1974.

Q. And on Conray-60, specifically?

A. I have never given a lecture on Conray-60, specifically, there would be no reason to.

Q. Doctor, showing you a photocopy of the Conray-60 insert. Would you please examine it.

MR. ESCALERA: Before the witness examines this insert, we're going to object to it, it is totally irrelevant; this is an insert dated November 1984.

* * *

EXHIBIT 1C

DR. MCLENNAN
Deposition in lieu of Testimony Videotaped

[120] BY MR. LOPEZ:

Q. Have you had an opportunity to examine the paragraph I have referred your attention?

A. Which one? Contrast media?

MR. ESCALERA: Excuse me, Brother counsel, if we're going to make reference to the book, the book is not yet into evidence. I am asking whether Brother counsel —

MR. LOPEZ: If there is no objection, I can offer [121] it into evidence right now.

MR. ESCALERA: I object to the document on the same basis that Brother counsel objected to the argument before, it has never been shown to us.

MR. LOPEZ: It has been extensively quoted, in our motion filed on September fourteenth, 1988, in support of our memorandum of law.

MR. ESCALERA: The articles we just referred to, were quoted to; they are in the same position and we feel that the book has not been provided to us, and those basis we object.

MR. LOPEZ: Your objection is noted. Now we will request that it be marked as Identification A. May I have the book?

MR. ESCALERA: Yes.

BY MR. LOPEZ:

Q. Doctor, would you agreed with the statement made by Doctor Czarnetzki; quote, "the possible path of Mechanism [122] involved in contrast media reactions, has been thoroughly investigated; histamine release from mast cells, and basophils seem to play a major role."

MR. ESCALERA: Excuse me, Brother counsel, can I — two things, without waiving the objection to the use of the book and to the posing of questions to the witness on the book; we would like the witness to have the opportunity to read the passage by himself.

MR. LOPEZ: He already did.

MR. ESCALERA: Did you read that passage, doctor?

THE DEPONENT: I skimmed the passage; let me have it back and let me read it in detail, so we don't have any confusion.

MR. ESCALERA: Umhum.

THE DEPONENT: Over here now? Oh, over here, now you pointed over here.

MR. LOPEZ: Page one oh —

[123] THE DEPONENT: Page one oh seven, paragraph seven, eight, one. The possible path of mechanisms involved in contrast media reactions have been thoroughly investigated. Histamine release from mast cells and basophils seems to play a major role. Would I agree with that? I would agree that it seems to play, in many cases a major role, but if the implication of that, which I have read similar statements many times, in many places, is that if — it's the majordomo, the major roles, other people have tried to say that, notwithstanding the references, it's just simply not true.

BY MR. LOPEZ:

Q. I don't want to turn over another glass of water. Would you agree with the following statements, with a few exceptions, mastocytosis is a benign proliferative disease of mast cells; fatal complications in the absence of a malignant disease may also occur, because of cardiovascular shock, after massive — mast cells degranulation. Patient should be instructed to avoid factors or agents that cause sudden [124] and extensive mast cells mediator release.

A. I have read similar statements.

Q. Do you agree with it?

A. I agree with that statement as a possibility, yes. All of those things are possible.

Q. Would you agree with the statement that a greater number of mast cells can produce a greater amount of histamine?

A. Yes.

Q. Do you agree with the statement, that an access of histamine can in turn lead to a series of adversed and even fatal reactions, including cardiacs and anaphylaxis, caused by the massive degranulation of these mast cells?

A. The massive release of histamine can lead to terrible consequences, just like you said, including cardiovascular collapse.

Q. Would you agree with the statement that if patients with urticaria pigmentosa, have an increase number of mast cells, upon being subjected to a substance, that promotes the secretion of histamine, a much greater amount of histamine would be release by this patient's mast cells, in comparison with patients who do not suffer from this condition?

A. That's speculation. I can't agree with it, there [125] is no — I don't have any first hand proof that that could occur, even in the reactions that have been talked about in the literature, and patients that have been challenged with stimulants that release histamine. To my knowledge, I don't have a reference, but I have read that book, that urticaria pigmentosa patients just have massive release of histamine, and even if they did, we know that that doesn't correlate with severe reactions. So if you talking about speculation, is it possible? Anything is possible, so I agree.

Q. Let's take this statement and break it down, doctor. Do patients with urticaria pigmentosa, have an increased number of mast cells?

A. Yes.

Q. Do patients when subjected to a substance that promotes the secretion of histamine, have a greater probability or a lesser probability of releasing histamine?

A. There is no question that they would have a greater possibility in an all phenomena, yes.

Q. And if you have an excess of mast cells, don't you think that then you would release more histamine?

A. I think it's possible.

Q. No, not possible. Whether it's true, as a condition. If you accepted two prior precep- —

A. It's not- —

[126] Q. How can you deny that the logical conclusion is that if you have an excess of mast cells, you will release more histamine?

A. I can't accept the conclusion, if the previous premise is that it's accepted that they are going to release their histamine, because it's well know that people that have excess of the mast cells, don't — I mean, they don't release them every single time, I mean, you just said —

Q. Doctor, —

A. — yourself the definition of, you know, benign mastocytosis, I mean, —

Q. Let's go back five prior questions.

A. Sure.

Q. And I specifically asked you, whether histamine is released, as the mast cells through various mechanism, one of which is by direct stimulation by substances, such as radio contrast media; and you agree?

A. I agree, right.

Q. And you agree that radio contrast media of which Conray-60, is a specific example, are well known activators of mast cells?

A. Yes.

Q. And when you activate mast cells, they release histamine?

[127] A. Histamine. Yes. So give me your conclusion again.

Q. And the conclusion is whether or not, if you have an excess or a greater amount of mast cells, a greater amount of histamine will be released?

A. Okay. I understand the question, and I think that that's — I can't argue with that. That's correct. If you have the mast cells, the greater amount, the likelihood that you're going to get histamine release, which is what they contain from the challenge, it's definitely increased.

Q. Now, if you have a patient, let me paraphrase. Would you agree with the statement that approximately fifty percent of the patients that have a condition of urticaria pigmentosa, has a systematic involvement — systemic involvement.

A. I read that and I don't have the reference at hand, I'm not a specialist, so I have to accept the fact that it's written in the literature, that people who are supposed to be experts, say that.

Q. When you're having patients, that not only have urticaria pigmentosa, but also have systemic mastocytosis, don't you think that he has even more mast cells, that will release more histamine, if exposed to an agent, such as a radio contrast media?

MR. ESCALERA: Objection to the question. It has been [128] established, even by plaintiff's own expert, that there is no evidence that this particular patient, had systemic mastocytosis. That has been established by both, Doctor McClennan and Doctor Roman Franco, so we think that a question of systemic mastocytosis has been given at this time.

MR. LOPEZ: I object to the way that Doctor Roman Franco's testimony is being summarized by Brother counsel, with all due respect, I completely disagree in that regard. The objection is noted, and I request the doctor to answer.

THE DEPONENT: Will you repeat the question, please.

BY MR. LOPEZ:

Q. Sure. If you have a patient that not only has urticaria pigmentosa, but also has the condition of a systemic mastocytosis, doesn't that patient have more mast cells as a result, spread in different organs of his body and as a result is exposed to an agent, such as contrast media, will release even more histamine?

[129] A. It's a possibility, yes.

Q. Not only a possibility, doctor. Isn't it, as a matter of fact, a much greater probability?

A. I'll stick with the answer probability or possibility. The

answer is possibility, because in my own feeling is that if that were to be the case, then because we have examined patients with systemic mastocytosis, or the probability is that many people have with contrast, and we have never heard of a report, I would be reluctant to accept it as anything more than a possibility, but I will agree, of course, because we have accepted your premise, more mast cells than more possibility; I can't argue with that.

Q. Doctor, how is systemic mastocytosis; —

(PAUSE)

A. How is systemic mastocytosis what?

Q. Excuse me.

MR. ESCALERA: The tape is about to finish.

MR. LOPEZ: Yes, I understand that's about to finish, so maybe we could have a break here.

(OFF THE RECORD)

BY MR. LOPEZ:

Q. Doctor, before the break, I started asking [130] you, what is the method used to diagnose systemic mastocytosis?

THE CAMERAMAN: "Perdon, un momento, todavia no estamos corriendo el tape."

BY MR. LOPEZ:

Q. Doctor, before the recess, my question was, how do you diagnose systemic mastocytosis?

A. To the best of my knowledge, I'm sure you get a much more accurate definition from specialists like Doctor Parker, but that — a couple of ways, a clinical manifestations that the patients might have of the so called benign proliferation of mast cells that you mentioned earlier, that involve multiple organisms, sometimes the diagnosis I'm told, it's difficult to make, because the patients have histamine release, and it's recognized for what it is, and the diagnosis is made too late in life. I know radiologists, because I know the name of the bone lesions of mastocytosis, that it can be picked up or

diagnosed by X-rays of the bones, of the malignant form of infiltration of body organs; I think it would be made pathologically, based on pathologic specimens by biopsy of surgery, as I think I said earlier, and one of the manifestations of systemic mastocytosis as we mentioned before, is the skin rash, of typical urticaria pigmentosa rash.

Q. What are the characteristics that distinguish

EXHIBIT NO. 2

Beate M. Czarnetzki

Urticaria

With 40 Color and 21 Black-and-White Figures

Springer-Verlag
Berlin Heidelberg New York Tokyo

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2329/3321-543210

* * *

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* * *

Marquardt DL, Parker CW, Sullivan TJ (1978) Potentiation of mast cell mediator release by adenosine, J Immunol 120:871-878 (pg 156, *"Urticaria"*, Czarnetzki)

Parker CW (1982) The chemical nature of slow-reacting substances. In: Weissman G (ed) Advances in Inflammation Research. Raven Press, New York, Vol 4, pp 1-24 (pg. 156, *ibid*)

* * *

Parker CW, Schechtel T. Falkenheim SF, Huber MM (1983) Induction of IgE receptors on human lymphocytes. Imm Comm 12:1-10 (pg. 157, *ibid.*)

* * *

Yecies LD. Kaplan AP (1980) Urticaria. In: Parker CW (ed) Clinical Immunology. Saunders, Philadelphia, pp 1283-1315 (pg. 158, *ibid.*)

* * *

Parker CW (1975) Drug therapy: Drug allergy. New Engl J Med 292:511-514 (pg. 160, *ibid.*)

* * *

Parker CW (1975) Drug allergy (Third of three parts). N Engl J Med 292:957-960 (pg. 176, ibid.)

* * *

id at 156 "*Parker, C.W.*" Huber MM, Hoffman MK, Falkenheim S F (1979) Characterization of two major species from rat basophilic leukemia cells as glutalthionil thioesters of eicosatetraenoic acids oxygenated at the 5 position. Evidence that peroxy groups are present and important for spasmogenic activity. Prostaglandins 18:673-686.

This book gives a brief introduction into the history of urticaria and presents thereafter a detailed, comprehensive review of the clinical aspects, the pathogenesis, the diagnosis and therapy of the different manifestations of this disease. The latest information from the literature is included. Separate chapters deal with acute and chronic urticaria, angioedema, the physical urticarias, contact urticaria, anaphylactoid reactions, the urticarial vasculitis syndrome, mastocytosis and the diagnosis and treatment of urticaria.

Of interest to specialists in dermatology, allergology, clinical immunology, pharmacology, pediatrics, internal medicine.

ISBN 3-540-15264-4
ISBN 0-387-15264-4

EXHIBIT NO. 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

JOSE OTERO LABORDE, ET AL,
PLAINTIFFS,
v.
INTERNATIONAL GENERAL ELECTRIC COMPANY, ET AL,
DEFENDANTS.

CIVIL CASE NO. 87-0278

October 11, 1988

SAN JUAN, PUERTO RICO BEFORE THE HONORABLE JOSE ANTONIO FUSTE

JURY TRIAL PROCEEDINGS

APPEARANCES:

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* * * VOLUME II * * *

* * *

[396] THE WITNESS: I don't mind answering the question.

THE COURT: Let me take a look at this.

MR. ESCALERA: May we call attention of the Court to Rule 80318?

THE COURT: Rule 80318, specifically requires that for this to be done, a periodical or book or treatise must be established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice, and we just don't have that here. Therefore, sustained.

MR. LOPEZ: Can we request reconsideration by approaching the bench with our Brother Counsel, your Honor?

THE COURT: Please.

* * * BENCH CONFERENCE ON THE RECORD * * *

MR. LOPEZ: Your Honor, as the Court may recall, in this case, two witnesses from Mallinckrodt were videotaped, deposed, or deposed using a videotape mechanism. And all the time references were being made to Dr. Czarnetzki. Dr. McClellen admitted he read the book.

THE COURT: Is that true?

MR. ESCALERA: Your Honor, my recollection, and I don't mind, I mean, I don't mean to play tricks with this, but my recollection was that Dr. Parker, told, I recall Dr. [397] Parker, and I recall that what he said is that he didn't know, that he didn't recognize that he knew the book but he didn't think that Czarnetzki was such a great thing. I mean, something to that effect. I am not playing tricks with this.

THE COURT: Do you have the transcript I can read?

MR. LOPEZ: I have it, but if the Court so wants —

THE COURT: Why don't you leave that for tomorrow.

MR. LOPEZ: Exactly.

THE COURT: So I can be in a position to rule. Give me the material I need to rule, and if it has been accepted by the defendants, even though the rule requires that he accepts it, you are facing him with this.

MR. ESCALERA: And he could have done that with — this was done with Dr. Parker.

MR. LOPEZ: Yes.

THE COURT: Well, then you use it through that deposition.

MR. LOPEZ: Okay.

THE COURT: Okay?

MR. LOPEZ: Okay.

• • • OPEN COURT • •

Q. (By Mr. Lopez) Now doctor, referring your attention to page 6, table 1, agents causing histamine release via thee major mechanisms. Studies of Stanworth 1980, Lagunoff et al, 1983.

EXHIBIT NO. 4

Engraved. (pgs. 307-308), FROM "Allergic Activation of Mast Cells", Charles W. Parker, M.D., Expert-Witness, *supra*, and Charles W. Parker's credentials, *infra*.

CURRICULUM VITAE	Charles W. Parker, M.D.
Birth	March 23, 1930 — St. Louis, Missouri
Social Security	490-38-0488
Residence	307 South Forest Avenue, St. Louis, Missouri 63119
Telephone	314-962-9250 (home) 314-362-6937 (office)
Marital Status	Married — Mary Langston Parker, M.D., June 13, 1953
Children	Keith (1954), Charles (1955), Kathy and Christy (1956), Sara (1960)
Pre-Medical Education	Washington University (St. Louis) 1947-1949
Medical Education	Washington University (St. Louis) 1949-1953 M.D. Degree Cum Laude and the Mosby Award
Social Organizations	Beta Theta Pi Fraternity Phi Beta Pi Medical Fraternity

CURRICULUM VITAE (Cont'd) — Charles W. Parker, M.D.

Hospital	Intern: Washington University School of Medicine and Barnes Hospital, 1953-1954
Training	Assistant Resident: Washington University School of Medicine, 1956-1958 Chief Resident: Washington University School of Medicine and Barnes Hospital, 1958-1959 (All on Ward Medical Service).
Academic Appointments	American Fellow of the Allergy Foundation, 1959-1961 Instructor in Medicine, Washington University School of Medicine, 1960 SPHS Research Fellow, 1961-1962 Head of the Division of Immunology, 1962 Research Career Awardee, 1962-72 from NIAID Assistant Professor of Medicine, Washington University School of Medicine, 1963 Associate Professor of Medicine, Washington University School of Medicine, 1968

(See also Request Form as filled out by Ms. Nancy Wright, Head, Index Section, "National Library of Medicine".)

Jpn. J. Allergol. 35
(5), 305-312, 1986

[NEW]

ALLERGIC ACTIVATION OF MAST CELLS

Charles W. Parker

Department of Internal Medicine, Division of Allergy and Immunology, Washington University, St. Louis, USA

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(See also "Allergic Activation of Mast Cells", enclosed, supra, by Charles W. Parker)

Publications (cont'd) Page 22.

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284. Kurosawa, M., and Parker, C.W. A phosphatidylinositol kinase in rat mast cell granules. 1. Immunol. 136:616, 1986.

285. Parker, C.W. Allergic activation of mast cells. Jpn. J. Allergol. 35:305-312, 1986.
(Emphasis Supplied)

EXHIBIT NO. 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

JOSE OTERO LABORDE, ET ALS,
PLAINTIFFS,
v.
GENERAL ELECTRIC COMPANY; Mallinckrodt, Inc.; Corporation A, B and/or C; Insurance Company A, B and C; John Doe and/or Jane Doe,
DEFENDANTS.

CIVIL CASE NO. 87-0278 (JAF)

DEPOSITION OF CHARLES PARKER

BE IT REMEMBERED that, pursuant to Notice of Taking of Deposition, and on the twenty ninth day of September, 1988, commencing at the hour of 7:00 P.M., thereof at Guastela Studio, Tres Monjitas Urbanization, Hato Rey, Puerto Rico, the deposition was held.

[2] APPEARANCES

Mr. Rafael Escalera Rodriguez
Lasa, Escalera & Reichard
Chase Bldg, 17th Floor
Hato Rey, Puerto Rico

and

Mr. Ramon H. Vargas (NOTARY PUBLIC)
Esquire Bldg, First Floor
Hato Rey, Puerto Rico

Attorneys for Mallinckrodt

Mr. Francisco M. Lopez Romo
P.O. Box 4492
San Juan, Puerto Rico

Attorney for Plaintiffs

Mr. Francisco Agrait Oliveras
P.O. Box 2195
Hato Rey, Puerto Rico

Attorney for General Electric Co.

Mr. Cesario Martinez

Court Reporters

* * *

[17] front of you?

A. Well, almost. There are about thirteen more publications that —

Q. Which?

A. — have been added since —

Q. Which would bring the total of your publications to around —

A. Three hundred and ten.

MR. ESCALERA: Any objection to —

MR. LOPEZ: No objection.

BY MR. ESCALERA:

Q. Doctor, why can't you be here for a trial?

A. Because unfortunately next week I'm already committed to give a lecture at a plannery symposium that is to — with a large number of people in the audience at an international symposium on allergy, so —

Q. Where?

A. It's going to be held in Switzerland, and I had made a prior commitment to that meeting.

Q. Thank you, doctor. Doctor, I understand that we will be dealing with a very technical subject, so from time to time I might be force for the benefit of the jury and all other

[19] mast cells present increased number and when they're mechanically stimulated they release mediators — allergic mediators such as histamine and that then causes the blood vessels to leak and cause the development of the hive.

Q. Okay. How common is the disease, this urticaria pigmentosa?

A. It is hard to arrive at a precise figure. Some estimates from dermatology clinics would put the frequency of all dermatologic admissions at around one per thousand, taking this figure and taking in terms of perhaps twenty percent of

patients presenting themselves to a dermatologist at one point or another, you might arrive at an estimate of approximately one in five thousand, or perhaps a little higher than this, but it's difficult to come up with a really precised figure.

Doctor Czarnetzki, who has written a recent review of urticaria, and estimates at their dermatology clinic at Munster Germany, which is not a particularly large town, they are seeing twenty new patients a year at their clinic alone. On that basis you would have to say, and this is a verified by dermatologists that are institutioned, that is not a rare disease and it's a disease which is easy recognized by a dermatologist who has a busy practice. But it's certainly not an extremely common condition by any means.

* * *

(Emphasis Supplied)

EXHIBIT NO. 6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

JOSE OTERO LABORDE, ET ALS,
PLAINTIFFS,
v.
INTERNATIONAL GENERAL ELECTRIC COMPANY, ET ALS,
DEFENDANTS.

CIVIL CASE NO. 87-0278 (JAF)

[FN3]

DEPOSITION OF ANGEL ANTONIO ROMAN FRANCO

BE IT REMEMBERED that, pursuant to Notice of Taking of Deposition, and on the nineteenth day of February, 1988, commencing at the hour of 5:30 p.m., thereof at the offices of Mr. Rafael Escalera, Lasa, Escalera & Reichard, Housing Investment Building, Seventeenth Floor, Hato Rey, Puerto Rico, personally appeared.

ANGEL ANTONIO ROMAN FRANCO

a witness, called by and on behalf of the Defendants, and who being first duly sworn, testified as follows;